IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JARON REEVEY	:	
v.	:	
BALTIMORE POLICE DEPARTMENT, et al.	:	Civil Action No. CCB-05-240

...o0o...

MEMORANDUM

Now pending before the court is a motion for summary judgment filed by defendants Officers Franklin Adkins, Manuel Moro, Jeremy Sagner, Anthony Weems, and Frank Ruppert of the Baltimore City Police Department ("defendants"). The plaintiff, Jaron Reevey, has sued the defendants under 42 U.S.C. § 1983, alleging that they exercised excessive force in violation of his constitutional rights by shooting him several times without justification.[1] The issues in this case have been fully briefed and no hearing is necessary. For the reasons stated below, the defendants' motion for summary judgment will be granted.

BACKGROUND

The undisputed facts are as follows. On January 25, 2002, Jaron Reevey kidnapped and carjacked Aaron Jones at gunpoint in Richmond, Virginia. (Defs.' Mem. at Ex. 3, Plaintiff's Certified Conviction.) He and his associate Sabrina Wright both displayed handguns to Mr. Jones, then tied Mr. Jones's hands behind his back, put him in the trunk of his vehicle, and drove to Baltimore. (Defs.' Mem. at Ex. 4, Wright Dep. at 16-17.) When Mr. Reevey and Ms. Wright

[1] Plaintiff no longer presses his claim against Mr. Ruppert, nor against Dr. Isadore Mihalakis, who does not appear to have been served in any event.

arrived in Baltimore, they parked in an alley behind a Greyhound bus station, and exited the vehicle. (Defs.' Mem. at Ex. 4, Wright Dep. at 16-17; Defs.' Mem. at Ex. 5, Reevey Dep. at 25.) After they had exited, Mr. Jones managed to exit the vehicle and talk with a police officer. (Defs.' Mem. at Ex. 4, Wright Dep. at 20-21.) The officer then approached Mr. Reevey and Ms. Wright as they were getting back into the vehicle and demanded that they get out of it, which they refused to do. (*Id.* at 22-23.) This led to an altercation with the officer, who drew his weapon and tried to open the door to the front passenger side (where Ms. Wright was sitting), but was denied entry by Mr. Reevey, who locked the door and then attempted to drive away. (*Id.* at 23.) Several police cars had surrounded the vehicle by this point, but Mr. Reevey was able to make enough room to exit the station by crashing into at least three police cars that were obstructing his path. (Defs.' Mem. at Ex. 5, Reevey Dep. at 50.)

A high-speed chase through downtown Baltimore ensued, with Mr. Reevey driving the vehicle at approximately fifty miles per hour to flee pursuing police cars. (*Id.*) Other officers - and eventually a police helicopter - joined the pursuit after hearing a "Signal 13" emergency call over the police radio, indicating that an officer was in danger and needing assistance. (Defs.' Mem. at Ex. 6, Sagner Dep. at 29.) At least one officer who responded recalls that the emergency call stated the fleeing vehicle contained a possible abduction victim. (Defs.' Mem. at Ex. 7, Adkins Dep. at 18.) The chase ended when Mr. Reevey, in an apparent attempt to avoid striking a nearby pursuing police car, swerved and crossed a median, losing control of the vehicle and crashing into a nearby wall. The vehicle struck the wall on the front driver's side, skidded, and came to rest with the driver's side of the vehicle at an angle to the wall. Ms. Wright was thrown from the vehicle as a result of the collision.

What happened next is a matter of dispute. Mr. Reevey claims that he was aware that the crash site was surrounded by police and "wanted to surrender," so he took a black bandanna that he was wearing, stepped out of the vehicle, began to walk toward the rear of the vehicle (in the direction of the police cars), and waved the bandanna in one hand while raising his other hand to the police officers to show that he was unarmed and surrendering. (Pl.'s Opp. Mem. at Ex. 1, Reevey Dec. at 2.) At this point the officers on the scene opened fire until Mr. Reevey fell to the ground. Forty-two shots were fired in all, with approximately eight hitting Mr. Reevey. (Pl.'s Opp. Mem. at Ex. 3, Firearm Discharge Reports.)

According to the police, Mr. Reevey exited the vehicle waving a dark-colored firearm, not a bandanna. All of the officers claim, both in their police reports and in their depositions, that they saw Mr. Reevey draw a handgun from the waistband of his pants and point it in the direction of Officer Adkins, and that they heard two shots fired. (Defs.' Mem. at Ex. 7, Adkins Dep. at 30-32; Defs.' Mem. at Ex. 8, Ruppert Dep. at 39; Pl.'s Opp. Mem. at Ex. 2, Adkins Report at 2, Kremenik Report at 1, Moro Report at 1, Sagner Report at 1, Weems Report at 1, & Ruppert Report at 1.) Officers Adkins and Kremenik claim that they fired their weapons because they thought they were being fired upon by Mr. Reevey, a claim confirmed by the other officers' police reports and not contradicted by deposition testimony. (*Id.*) Officer Adkins further asserts that, after Mr. Reevey fell, he approached him, saw Mr. Reevey trying to reach for a handgun lying near him, and stepped on his hand to prevent him from grasping it. (Pl.'s Opp. Mem. at Ex. 6, Adkins Dep. at 33-34.) After Mr. Reevey was immobilized, he was transported to Johns Hopkins Hospital, where he was treated for his injuries.

Consistent with the officers' account, a subsequent investigation of the crash site yielded

a dark-colored semi-automatic handgun, found on the ground near where Mr. Reevey had been wounded, as well as a chrome-colored automatic handgun, found in the crashed vehicle. However, both guns were later tested by the Baltimore City Police Department Firearms Examiner, who determined that they were incapable of being fired in their current condition, and that the dark-colored handgun had not been fired for some time. (Pl.'s Opp. Mem. at Ex. 7, Wagster Dep. at 25, 29, & 31.) Moreover, of the forty-one bullet casings also recovered from the crash site, none matched the caliber of the two guns recovered. (Pl.'s Opp. Mem. at Ex. 4, French Dep. at 52, 57-58; *id.* at Ex. 7, Wagster Dep. at 32.) This evidence is consistent with Mr. Reevey's claim that he did not fire two shots during the confrontation. Also consistent with Mr. Reevey's account, a black bandanna was among the other pieces of evidence collected at the site. (*Id.* at 70.)

On April 16, 2002, Mr. Reevey was charged in federal court with carjacking, kidnapping, aiding and abetting, and possession of a firearm in furtherance of a crime of violence. He was ultimately convicted by a jury on all counts and sentenced by then Chief District Judge Frederic N. Smalkin (FNS-02-0146) to a term of imprisonment. Mr. Reevey now brings this civil action.[2]

ANALYSIS

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment:

> should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law.

[2] The court thanks appointed counsel Charles M. Kerr for his vigorous representation of Mr. Reevey.

Fed. R. Civ. Pro. 56(c). The Supreme Court has clarified that this does not mean any factual dispute will defeat the motion:

> By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original).

"A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts showing that there is a genuine issue for trial.'" *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court must "view the evidence in the light most favorable to . . . the nonmovant, and draw all reasonable inferences in her favor without weighing the evidence or assessing the witness' credibility," *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 644-45 (4th Cir. 2002), but the court also must abide by the "affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial." *Bouchat*, 346 F.3d at 526 (internal quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

Mr. Reevey alleges that Baltimore City police officers used excessive force against him, thereby violating his constitutional rights, when they shot him several times on the evening of January 25, 2002. The named officers defend by claiming qualified immunity from civil liability for any such actions. *See Slattery v. Rizzo*, 939 F.2d 213, 216 (4th Cir. 1991) (allowing police officers to raise the qualified immunity defense in § 1983 excessive force actions).

Law enforcement officers performing discretionary functions are entitled to qualified

immunity from suit to the extent that their conduct does not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This protection is extended to "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). When evaluating a claim of qualified immunity, the court must first consider the threshold question of whether the facts alleged, taken in the light most favorable to the plaintiff, show that the officers' conduct violated a constitutional right. *See Saucier v. Katz*, 533 U.S. 194, 200-201 (2001). If the court finds no constitutional violation, then there is no need to inquire further into qualified immunity. *Id.* at 201. If, however, the court finds a constitutional violation, then it must determine whether the right was "clearly established" at the time of the violation. *Id.* This second step in the qualified immunity analysis asks "whether it would have been clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id.* at 202. Because qualified immunity is an affirmative defense, the officers must establish that it would not be clear to a reasonable officer that their conduct was unlawful in the situation presented.

To determine whether an officer's conduct in the course of making an arrest constitutes excessive force in violation of the Constitution, the Fourth Amendment's "objective reasonableness" standard is applied. *Graham v. Connor*, 490 U.S. 386, 395 (1989). According to this standard, an officer's actions are not excessive if they are "objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397 (internal quotations omitted); *see also Carr v. Deeds*, 453 F.3d 593, 600 (4th Cir. 2006). Application of this standard "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the

suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. Moreover, because "police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation," *Graham*, 490 U.S. at 397, the reasonableness of the force used is assessed from the perspective of a reasonable officer on the scene, rather than the perspective of one with the benefit of hindsight. *Id.* at 396; *see also Carr*, 453 F.3d at 600. Finally, because many of the situations officers face in the course of their duties are ambiguous, the court must allow for reasonable mistakes. *See Schultz v. Braga*, 455 F.3d 470, 478 (4th Cir. 2006).

Here, it is undisputed that, by the time the officers in question first confronted Mr. Reevey, they were under the reasonable impression that he had already put an officer's life in danger, as evidenced by the "Signal 13" call. It was also objectively reasonable for them to believe that he was willing to do so again, given that he led them on a high-speed chase through downtown Baltimore, crashing into police cars along the way, rather than submit to police custody. In light of these preliminary facts alone, the officers' ensuing choice to exercise some degree of force against Mr. Reevey when given the opportunity to take him into custody is warranted. Their decision to exercise possible deadly force also was reasonable in light of their perception, substantiated by sworn testimony and reports, that Mr. Reevey was pointing a gun in the direction of Officer Adkins and had possibly fired two shots.[3] Although Mr. Reevey claims

[3] As noted previously, from the firearms and ballistics evidence in the record it does not appear that Mr. Reevey in fact fired two shots. (Pl.'s Opp. Mem. at Ex. 4, French Dep. at 52, 57-58.); *Id.* at Ex. 7, Wagster Dep. at 25 & 29.) Under the circumstances of this case, the use of

he was simply waving a bandanna and not using a handgun, what matters is the perspective of a reasonable police officer at the scene. It would have been reasonable, in light of the other undisputed facts, for these officers - perhaps mistaking a black bandanna for a gun - to conclude that he posed an immediate threat to their safety. *See Tennessee v. Garner*, 471 U.S. 1, 11 (1985). If this perception was mistaken, as Mr. Reevey contends, it was certainly a reasonable mistake under the circumstances. *See Braga*, 455 F.3d at 478. For all of the above reasons, the officers' use of force was not unconstitutionally excessive and no Fourth Amendment violation has been shown. *See Anderson v. Russell*, 247 F.3d 125, 131 (4th Cir. 2001) (finding an officer's use of deadly force to be reasonable in a case where an unarmed suspect appeared to have a gun).

However, even if the officers' actions could be described as an unconstitutionally excessive exercise of force, the undisputed facts show that it would not have been clear to a reasonable officer that these actions were unlawful in this situation. As noted above, the second step of the qualified immunity analysis in excessive force cases requires the court to consider whether it was "clearly established" that the plaintiff had a right not to have force used against him in the way alleged. *See Saucier*, 533 U.S. at 202. At this stage, the court must not look simply to the general clarity of the right, but rather to the specific understanding of the officer accused of violating it; "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987); *see also Iko v. Shreve*, 535 F.3d 225, 237-38 (4th Cir. 2008).

The officers here have shown, through sworn testimony and reports, that they thought

---

deadly force would have been justified by Mr. Reevey's apparent pointing of a weapon at the officers, even if they were mistaken about the sound of two shots.

Mr. Reevey was pointing at gun at one of the officers, and may indeed have fired two shots. Under these circumstances, use of deadly force was warranted, and thus not violative of any right held by Mr. Reevey. Moreover, existing law would have given officers no indication that Mr. Reevey enjoyed a clear right not to have deadly force used against him in this context. While persons generally enjoy a right under the Fourth Amendment not to have excessive force used against them by government officials, the Supreme Court has repeatedly held deadly force to be constitutionally permissible where an officer has grounds to believe that a person "poses a threat of serious physical harm, either to the officer or to others." *Tennessee v. Garner*, 471 U.S. at 11; *see also Scott v. Harris*, 127 S. Ct. 1769, 1778 (2007).

Because the uncontested facts show that the officers' choice to exercise deadly force against Mr. Reevey would not have been understood by a reasonable officer to be in violation of any clearly established right, the defendant officers would be entitled to qualified immunity from suit. *See Carr*, 453 F.3d at 601. As already concluded, however, qualified immunity need not be applied here since no constitutional violation occurred.

CONCLUSION

For the foregoing reasons, the defendants' motion for summary judgment will be granted. A separate Order follows.

September 22, 2008
Date

/s/
Catherine C. Blake
United States District Judge